

EXHIBIT 3

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TRANSCRIPT CONFIDENTIAL UNDER THE PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PATRICK CALHOUN, et al., on)
behalf of themselves and all)
others similarly situated,)
Plaintiff,)
vs.) Case No.
GOOGLE, LLC,) 5:20-cv-05146-LHK-
Defendant.) SVK

CHASOM BROWN, et al., on)
behalf of themselves and all)
others similarly situated,)
Plaintiff,)
vs.) Case No.
GOOGLE, LLC,) 5:20-cv-03664-LHK
Defendant.)

ZOOM VIDEOTAPED DEPOSITION OF JUSTIN SCHUH
Mountain View, California
Thursday, January 6, 2022
Volume I

Reported by:
LORI M. BARKLEY, CSR No. 6426

Job No. 5015859
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

1			
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3			
4			

5	PATRICK CALHOUN, et al., on)	
	behalf of themselves and all)	
6	others similarly situated,)	
)	
7	Plaintiff,)	
)	
8	vs.)	Case No.
)	5:20-cv-05146-LHK-
9	GOOGLE, LLC,)	SVK
)	
10	Defendant.)	
	_____)	
11	CHASOM BROWN, et al., on)	
	behalf of themselves and all)	
12	others similarly situated,)	
)	
13	Plaintiff,)	
)	
14	vs.)	Case No.
)	5:20-cv-03664-LHK
15	GOOGLE, LLC,)	
)	
16	Defendant.)	
	_____)	

Zoom Videotaped deposition of JUSTIN SCHUH,
Volume I, taken on behalf of Plaintiffs, at Mountain
View, California, beginning at 9:04 a.m., and ending
at 3:25 p.m., on Thursday, January 6, 2022, before
LORI M. BARKLEY, Certified Shorthand Reporter
No. 6426.

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22 Videographer:

23 Cassia Leet
24
25

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1 Mountain View, California; Thursday, January 6, 2022

2 9:04 a.m.

3 09:04:03

4 VIDEO OPERATOR: Good morning. We are going 09:04:09

5 on the record at 9:04 a.m., on January 6, 2022. 09:04:10

6 Please note that the microphones may pick up 09:04:17

7 background noise, conversations, and interference if 09:04:20

8 unmuted. Remember to unmute to speak. 09:04:24

9 Audio and video recording will continue to 09:04:27

10 take place unless all parties agree to go off the 09:04:30

11 record. 09:04:33

12 This is Media Unit 1 of the video recorded 09:04:34

13 deposition of Justin Schuh, taken by counsel for 09:04:38

14 Plaintiffs in the matter of Patrick Calhoun, et al., 09:04:42

15 versus Google LLC, and in the matter of Chasom Brown, 09:04:46

16 et al, versus Google, Inc., filed in the United 09:04:51

17 States District Court, Southern District of 09:04:55

18 California, San Jose Division. 09:04:57

19 Case number 520-cv-05146-LHK-SDK, and case 09:04:59

20 number 520-cv-03664-LHK. 09:05:11

21 This deposition is being conducted using 09:05:18

22 Veritext virtual technology, and all participants are 09:05:21

23 attending remotely. 09:05:24

24 My name is Cassia Leet from Veritext Legal 09:05:27

25 Solutions and I am the videographer. The court 09:05:31

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1 reporter is Lori Barkley of Veritext Legal Solutions. 09:05:33

2 I am not related to any party in this 09:05:37

3 action; nor am I financially interested in the 09:05:40

4 outcome. 09:05:42

5 Would counsel and everyone attending 09:05:43

6 remotely please state your appearances and 09:05:45

7 affiliations for the record. 09:05:47

8 MR. FRAWLEY: Good morning. Alexander 09:05:51

9 Frawley for the Brown plaintiffs from Susman Godfrey. 09:05:54

10 With me are my colleague Beko Richardson and Mark 09:05:56

11 Mao, also for the Brown plaintiffs from Boies 09:06:00

12 Schiller Flexner.

13 MS. TRUONG: An Truong, Simmons Hanly 09:06:04

14 Conroy, for Calhoun plaintiffs. Also joining me 09:06:07

15 remotely is Sharon Cruz, from Dicello Levitt, also 09:06:09

16 Calhoun plaintiffs. 09:06:12

17 MR. ANSORGE: Good morning. Josef Ansorge, 09:06:13

18 with Quinn Emanuel Urquhart & Sullivan for Google, 09:06:16

19 being joined today by my colleague, Tracy Gao, also 09:06:18

20 of Quinn Emanuel. And also joined by Toni Baker, who 09:06:22

21 is counsel with Google. 09:06:25

22 VIDEO OPERATOR: Would the court reporter 09:06:31

23 please swear in the witness. 09:06:32

24

25

1 JUSTIN SCHUH,
2 having been administered an oath, was examined and
3 testified as follows:
4

5 EXAMINATION

6 BY MR. FRAWLEY: 09:06:49

7 Q. Good morning, Mr. Schuh. 09:06:49

8 A. Good morning. 09:06:55

9 Q. Please state your full name. 09:06:55

10 A. Justin Schuh. 09:07:00

11 Q. And what is your home address? 09:07:00

12 A. 226 Mercy Street, Mountain View, Illinois. 09:07:05

13 MR. ANSORGE: With that, I'd like to 09:07:12
14 designate this transcript as confidential under the 09:07:13
15 protective order as we're getting into more personal 09:07:15
16 information. 09:07:18

17 BY MR. FRAWLEY: 09:07:21

18 Q. And is that where you are today? 09:07:22

19 A. Yes. 09:07:23

20 Q. And are you with anyone today? 09:07:27

21 A. No. 09:07:29

22 Q. And how long has that been your home 09:07:29
23 address? 09:07:33

24 A. Ten years, I guess. 09:07:39

25 Q. And you're currently retired from Google; is 09:07:40

1 that correct?

2 A. Yes. 09:07:45

3 Q. And when did you retire? 09:07:47

4 A. Early last year. 09:07:51

5 Q. Early 2021? 09:07:54

6 A. Yes. February, March 2021. 09:07:57

7 Q. And are you currently employed? 09:08:02

8 A. No. 09:08:06

9 Q. And when you were working for Google, what
10 was your business address? 09:08:09
09:08:11

11 A. I don't remember. 09:08:17

12 Q. Do you remember which city? 09:08:19

13 A. Yes. Whatever Google headquarters was in
14 Mountain View, California. 09:08:23
09:08:27

15 Q. And was that your business address
16 throughout your career at Google? 09:08:29
09:08:31

17 A. Yes. 09:08:36

18 Q. Now, have you ever testified before? 09:08:40

19 A. No. 09:08:42

20 Q. And do you understand that you are under
21 oath today? 09:08:45
09:08:48

22 A. Yes. 09:08:50

23 Q. And is there any reason you cannot testify
24 truthfully today? 09:08:51
09:08:54

25 A. No. 09:08:56

1 defaults? 14:38:21

2 A. No. 14:38:21

3 MR. FRAWLEY: Let me introduce another 14:38:37

4 exhibit. 14:38:38

5 (Exhibit 19 was marked for identification and 14:38:57

6 is attached hereto.) 14:39:12

7 MR. FRAWLEY: Okay. I've introduced what's 14:39:12

8 been marked as Exhibit 19. It is Bates number 14:39:14

9 GOOG-BRWN-00476117. 14:39:21

10 Q. Please let me know when you have Exhibit 19 14:39:29

11 in front of you. 14:39:32

12 A. I have it in front of me, but it's a very 14:40:07

13 long chat log. 14:40:09

14 Q. So I'm only going to ask you about the first 14:40:10

15 page. 14:40:13

16 A. All right. Let me skim quickly. 14:40:13

17 Okay. I have skimmed it really quickly. 14:40:49

18 Q. Do you see where CS Harrison wrote 14:40:52

19 (as read):

20 I am a bit confused since the new 14:40:56

21 proposal for [REDACTED] is and 14:40:59

22 Incognito detector. 14:41:02

23 And then I think CS Harrison then corrected 14:41:03

24 it and says (as read): 14:41:06

25 I am a bit confused since the new 14:41:07

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1 proposal for [REDACTED] is an 14:41:13
2 Incognito detector. 14:41:15
3 Do you see that? 14:41:16
4 A. Yes. 14:41:17
5 Q. Then you said (as read): 14:41:17
6 Yeah, that's a bit of a mess to 14:41:18
7 let's not focus on today, but 14:41:20
8 instead think of a world where 14:41:22
9 Incognito is otherwise undetectable. 14:41:24
10 Do you see that? 14:41:27
11 A. Yes. 14:41:27
12 Q. Now, why was the new proposal for [REDACTED] 14:41:28
13 [REDACTED] a bit of a mess? 14:41:33
14 MR. ANSORGE: Objection, vague. And form. 14:41:34
15 THE WITNESS: I -- I don't think I meant -- 14:41:43
16 you see, you're asking me what I meant in that 14:41:44
17 moment, but it's kind of hard. 14:41:46
18 My -- my response about think of a world 14:41:51
19 where Incognito is not detectable, my point here is 14:41:54
20 that -- was that there's going to be intermediate 14:41:59
21 stages where it's not -- where detectability of 14:42:06
22 Incognito mode could go back and forth depending on 14:42:11
23 code changes, right. 14:42:13
24 But the intended end state would 14:42:14
25 eliminate -- that's not an issue -- and I don't know 14:42:21

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1 what specific proposal Charlie was referring to at 14:42:23
2 the time, but it's more -- I was telling Charlie, 14:42:27
3 don't focus on the intermediate states, let's -- 14:42:30
4 let's think in terms of the end state -- end state 14:42:34
5 and the constraints we'll have in the end state. 14:42:38
6 BY MR. FRAWLEY: 14:42:44
7 Q. And if you recall, how would a proposal for 14:42:44
8 [REDACTED] have been an Incognito detector? 14:42:47
9 MR. ANSORGE: Objection, vague. Foundation. 14:42:51
10 THE WITNESS: I -- so I think -- they 14:43:06
11 targeted a very poor choice of words there because I 14:43:08
12 think Incognito, I think they might imply this on 14:43:12
13 purpose. What Charlie -- from the context of the 14:43:14
14 conversation is very clear to me -- or it's certainly 14:43:16
15 the way I would interpret it, is that Charlie is 14:43:20
16 saying oh, but they're looking at making this change 14:43:23
17 to Incognito and it might make Incognito more 14:43:25
18 detectable at -- I don't know what that change would 14:43:27
19 be. 14:43:33
20 I'm just saying this is -- it's a complex 14:43:34
21 system. You can make a change in one spot where 14:43:36
22 you're like, hey, we've made this more private, this 14:43:39
23 is better, but it has some side effect properties 14:43:41
24 that you -- that you hadn't factored that pop out 14:43:44
25 elsewhere. 14:43:47

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1 So that's -- that is the context of this 14:43:47
2 discussion. 14:43:50
3 BY MR. FRAWLEY: 14:43:52
4 Q. And how might [REDACTED] have made 14:43:52
5 Incognito more detectable, [REDACTED] specifically? 14:43:55
6 A. I don't -- I don't know. I don't recall. 14:44:00
7 Q. And when you're talking about Incognito 14:44:04
8 being detectable, detectable by whom? 14:44:07
9 MR. ANSORGE: Objection, vague. And form. 14:44:13
10 THE WITNESS: Incognito detection always 14:44:21
11 refers to -- or at least whenever I've heard the term 14:44:27
12 used and whenever I've used the term, I believe it 14:44:29
13 has always referred to the site that you are visiting 14:44:32
14 in Incognito mode, detecting that you are, in fact, 14:44:35
15 in Incognito mode. 14:44:39
16 BY MR. FRAWLEY: 14:44:44
17 Q. And how might a website detect that you are 14:44:44
18 in Incognito mode? 14:44:47
19 A. A bug in a browser implementing Incognito or 14:44:53
20 whatever private browsing mode. It's some sort of 14:44:55
21 unintentional information leakage. 14:44:59
22 Q. Any other ways? 14:45:07
23 A. I -- I don't believe so. 14:45:09
24 Q. So is there some kind of bug associated with 14:45:19
25 [REDACTED] that might have made Incognito 14:45:22

1 detectable? 14:45:25

2 A. No. This gets back to what I was saying 14:45:33

3 earlier about these are complex systems, and 14:45:35

4 sometimes you make a change in one part and it 14:45:38

5 introduces a bug in another part. 14:45:41

6 And sometimes those are -- those can be 14:45:45

7 unavoidable. I think -- so when you -- yeah. 14:45:50

8 That's -- that's just -- it's just -- it is the 14:46:02

9 reality of the -- of building a complex system. 14:46:05

10 MR. FRAWLEY: Okay. I'm going to introduce 14:46:21

11 another exhibit. 14:46:22

12 Okay. I've introduced what's been marked as 14:46:57

13 Exhibit 20. 14:47:00

14 (Exhibit 20 was marked for identification and 14:47:00

15 is attached hereto.)

16 BY MR. FRAWLEY: 14:47:01

17 Q. Please let me know when you have Exhibit 20 14:47:01

18 in front of you. 14:47:03

19 A. I have it in front of me. 14:47:46

20 Q. Is this a tweet that you tweeted? 14:47:47

21 A. Yes. 14:47:54

22 Q. And do you see where you tweeted (as read): 14:47:54

23 Given that IP is such a strong 14:47:55

24 key for linking identity across not 14:47:57

25 just sites, but apps as well ... 14:47:59